

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

IRVING MURRAY,

Plaintiff,

v.

JOHN E. WETZEL, et al,

Defendants.

No. 3:17-cv-00491

(Senior Judge Rambo)

(Magistrate Judge Carlson)

**ORDER**

**MARCH 21, 2019**

Irving Murray, formerly a Pennsylvania state prisoner, filed a 42 U.S.C. § 1983 complaint alleging that numerous defendants violated his First and Eighth Amendment rights. (Doc. 1). In response to several motions, Magistrate Judge Martin C. Carlson has issued three Reports and Recommendations. (Doc. 225, 226, 228).

In the first, Magistrate Judge Carlson recommends that this Court deny as moot all motions related to a preliminary injunction regarding treatment for Murray's Hepatitis C, as Murray has been released from custody. (Doc. 225). The second Report and Recommendation recommends that the Court grant a motion to dismiss filed by Defendants Robert Marsh, Keri Moore, Paul Noel, and E. Everding on the ground that the complaint contains no well-pled allegations against those four

defendants. (Doc. 226). Finally, the third Report and Recommendation recommends that this Court grant in part and deny in part the motion to dismiss filed by Defendants Jay Cowan, R. Miller, and Nancy Palmigiano on the grounds that Murray failed to exhaust his administrative remedies for several claims and, of the remaining claims, sufficiently stated a claim only with regard to his Hepatitis C treatment. Magistrate Judge Carlson further recommends that this Court grant in part Murray's motion for relief. (Doc. 228). No timely objections were filed.

Where no objection is made to a report and recommendation, this Court will review the recommendation only for clear error. Fed. R. Civ. P. 72(b), advisory committee notes; *see Henderson v. Carlson*, 812 F.2d 874, 878 (3d Cir. 1987) (explaining that court should in some manner review recommendations regardless of whether objections were filed). Regardless of whether timely objections are made, district courts may accept, reject, or modify—in whole or in part—the magistrate judge's findings or recommendations. 28 U.S.C. § 636(b)(1); Local Rule 72.31. The Court has reviewed the record and finds no clear error. Consequently, it is hereby ordered that:

1. Magistrate Judge Martin C. Carlson's Reports and Recommendations (Docs. 225, 226, 228) are ADOPTED in their entireties;

2. All motions related to a preliminary injunction regarding the treatment of Murray's Hepatitis C (Docs. 172, 175, 182, 189, 199) are DENIED as moot;
3. The motion to dismiss filed by Marsh, Moore, Noel, and Everding (Doc. 140) is GRANTED, and all claims against those Defendants are DISMISSED;
4. The motion to dismiss filed by Cowan, Miller, and Palmigiano (Doc. 144) is GRANTED IN PART. Murray's Eighth Amendment claim against Miller and Cowan related to the treatment provided for Murray's Hepatitis C shall proceed. All claims against Palmigiano, and claims against Cowan and Miller related to Murray's fall from his bunk and subsequent medical treatment, as well as claims related to alleged violations of Murray's First Amendment rights, are DISMISSED; and
5. Murray's motion for relief (Doc. 161) is GRANTED IN PART, to the extent that Murray's claims for monetary damages against Defendants in their individual capacities shall not be dismissed at this stage of litigation.

BY THE COURT:

s/Sylvia H. Rambo  
Sylvia H. Rambo  
Senior United States District Judge